

§ 158.17

the measures have been approved pursuant to 49 U.S.C. 47504; or

(6) Construction of gates and related areas at which passengers are enplaned or deplaned and other areas directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. These areas do not include restaurants, car rental facilities, automobile parking facilities, or other concessions. In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, a project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door, and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate.

(c) An eligible project must be adequately justified to qualify for PFC funding.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 37127, Aug. 2, 1991; Amdt. 158-2, 65 FR 34541, May 30, 2000]

§ 158.17 Project eligibility at PFC levels of \$4 or \$4.50.

(a) A project for any airport is eligible for PFC funding at levels of \$4 or \$4.50 if—

(1) The project meets the eligibility requirements of § 158.15;

(2) The project costs requested for collection at \$4 or \$4.50 cannot be paid for from funds reasonably expected to be available for the programs referred to in 49 U.S.C. 48103; and

(3) In the case of a surface transportation or terminal project, the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.

(b) In addition, a project for a medium or large airport is only eligible for PFC funding at levels of \$4 or \$4.50 if the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the

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impact of aviation noise on people living near the airport.

[Doc. No. FAA-2000-7402, 65 FR 34541, May 30, 2000]

§ 158.19 Requirement for competition plans.

(a) Beginning in fiscal year 2001, no public agency may impose a PFC with respect to a covered airport unless the public agency has submitted a written competition plan. This requirement does not apply to PFC authority approved prior to April 5, 2000.

(b) The Administrator will review any plan submitted under paragraph (a) of this section to ensure that it meets the requirements of 49 U.S.C. 47106(f) and periodically will review its implementation to ensure that each covered airport successfully implements its plan.

[Doc. No. FAA-2000-7402, 65 FR 34541, May 30, 2000]

Subpart B—Application and Approval

§ 158.21 General.

This subpart specifies the consultation and application requirements under which a public agency may obtain approval to impose a PFC and use PFC revenue on a project. This subpart also establishes the procedure for the Administrator's review and approval of applications and amendments and establishes requirements for use of excess PFC revenue.

§ 158.23 Consultation with air carriers and foreign air carriers.

(a) *Notice by public agency.* Prior to submitting an application to the FAA for authority to impose a PFC under § 158.25(b) and for project approval under § 158.25(c), a public agency shall provide written notice to all air carriers and foreign air carriers operating at the airport except those air carriers that the public agency may choose to request not to collect PFC's as provided by § 158.11. The notice shall include—

(1) Descriptions of projects being considered for funding by PFC's;

(2) The PFC level for each project, the proposed charge effective date, the

estimated charge expiration date, and the estimated total PFC revenue;

(3) For a request by a public agency that any class or classes of carriers not be required to collect the PFC—

(i) The designation of each such class,

(ii) The names of the carriers belonging to each such class, to the extent the names are known,

(iii) The estimated number of passengers enplaned annually by each such class, and

(iv) The public agency's reasons for requesting that carriers in each such class not be required to collect the PFC; and

(4) Except as provided in § 158.25(c)(2), the date and location of a meeting at which the public agency will present such projects to air carriers and foreign air carriers operating at the airport.

(b) *Meeting.* The meeting required by paragraph (a)(4) of this section shall be held no sooner than 30 days nor later than 45 days after issuance of the written notice required by paragraph (a) of this section. At or before the meeting, the public agency shall provide air carriers and foreign air carriers with—

(1) A description of projects;

(2) An explanation of the need for the projects; and

(3) A detailed financial plan for the projects, including—

(i) The estimated allowable project costs allocated to major project elements;

(ii) The anticipated total amount of PFC revenue that will be used to finance the projects; and

(iii) The source and amount of other funds, if any, needed to finance the projects.

(c) *Requirements of air carriers and foreign air carriers.* (1) Within 30 days following issuance of the notice required by paragraph (a) of this section, each carrier must provide the public agency with a written acknowledgement that it received the notice.

(2) Within 30 days following the meeting, each carrier must provide the public agency with a written certification of its agreement or disagreement with the proposed project. A certification of disagreement shall contain the reasons for such disagreement. The absence of

such reasons shall void a certification of disagreement.

(3) If a carrier fails to provide the public agency with timely acknowledgement of the notice or timely certification of agreement or disagreement with the proposed project, the carrier is considered to have certified its agreement.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34541, May 30, 2000]

§ 158.25 Applications.

(a) *General.* This section specifies the information to be submitted by a public agency when applying for the authority to impose a PFC and for the authority to use PFC revenue on a project. A public agency may apply for the authority to impose a PFC at any commercial service airport it controls to finance airport-related projects to be carried out at that airport or at any existing or proposed airport which the public agency controls. A public agency may apply for the authority to impose a PFC in advance of or concurrent with an application to use PFC revenue. Applications shall be submitted in a manner and form prescribed by the Administrator and shall include the information required under paragraphs (b) or (c), or both, of this section.

(b) *Application for authority to impose a PFC.* This paragraph sets forth the information to be submitted by all public agencies seeking authority to impose a PFC. A separate application shall be submitted for each airport at which a PFC is to be imposed. The application shall be signed by an authorized official of the public agency, and, unless otherwise authorized by the Administrator, must include the following:

(1) The name and address of the public agency.

(2) The name and telephone number of the official submitting the application on behalf of the public agency.

(3) The official name of the airport at which the PFC is to be imposed.

(4) The official name of the airport at which a project is proposed.

(5) A copy of the airport capital plan or other documentation of planned improvements for each airport at which a PFC financed project is proposed.